

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 CORY ROBERTS,

11 CASE NO. C10-1252-JCC

12 Plaintiff,

13 ORDER

14 v.

15 KELLY CUNNINGHAM,

16 Defendant.

17 The Court, having reviewed petitioner's amended petition for writ of habeas corpus,  
18 respondent's answer, petitioner's reply, the Report and Recommendation of the Honorable Brian  
19 A. Tsuchida, United States Magistrate Judge, and petitioner's objections, rules as follows.

20 In the Report and Recommendation, Magistrate Judge Tsuchida found that petitioner was  
21 not in custody pursuant to the judgment of a State court. (Dkt. No. 20 at 6.) In response, petitioner  
22 argues that even if he is not in custody, he is under the restraint of two years of community  
23 supervision/custody. Plaintiff goes on to argue that the difficulties associated with, and stigma  
24 attached to, his guilty plea are so great that they should be treated as equivalent to being in  
25 custody. (*Id.* at 3–4.) Plaintiff's final argument is that while federal habeas corpus laws require a  
26 petitioner to be in custody, Washington State personal restraint petitions require only that the  
petitioner be under restraint. (*Id.* at 4.) None of these arguments is convincing.

1 Petitioner expresses a desire that he be considered in custody, and a wish that the current  
2 definition of custody be expanded. But it is this Court's job to apply the law, not to change it.  
3 Under the statutory definition of custody, as applied in 28 U.S.C. §2254(a), petitioner is not in  
4 custody. Therefore:

- 5 1. The Court adopts the Report and Recommendation.
- 6 2. Petitioner's amended petition for writ of habeas corpus (Dkt. No. 10) and this  
7 action are DISMISSED with prejudice.
- 8 3. In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the  
9 United States District Courts, a certificate of appealability is DENIED with respect  
10 to all claims asserted by petitioner in his amended petition.
- 11 4. The Clerk shall send copies of this Order to petitioner, to counsel for respondent,  
12 and to Judge Tsuchida.

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15 DATED this 24th day of June 2011.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE